

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WEN LIU,

Plaintiff,

-v-

MOUNT SINAI SCHOOL OF MEDICINE,
et al.,

Defendants.

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/15/10

No. 09 Civ. 9663 (RJS) (AJP)
ORDER

RICHARD J. SULLIVAN, District Judge:

On March 29, 2010, the Honorable Andrew J. Peck, United States Magistrate Judge issued a Report and Recommendation (the "Report") in this matter recommending that Plaintiff's complaint be dismissed without prejudice for failure to timely serve Defendants pursuant to Federal Rule of Civil Procedure 4(m). On April 12, 2010, the Court was copied on a letter written to Judge Peck by Plaintiff seeking an additional thirty days to serve Defendants. Plaintiff argues that his difficult personal situation, including homelessness and immigration problems, merit an extension of time to serve Defendants.

After reviewing Judge Peck's Report de novo, the Court adopts it in its entirety. Despite Plaintiff's difficult personal situation, it must be noted that Plaintiff failed to respond to Judge Peck's order to show cause issued on December 4, 2009 with a return date of December 28, 2009. (*See* Doc. No. 4.) Additionally, on January 4, 2010, Judge Peck sent Plaintiff, by certified mail, an order directing him to serve the complaint on Defendants by March 22, 2010. (*See* Doc. No. 5.) Plaintiff signed the postal return receipt for that order on January 7, 2010. (Report at 2 n.1.) Nevertheless, notwithstanding his receipt of the January 4, 2010 order, Plaintiff *still* failed to even

request an extension of time in which to serve Defendants until after Judge Peck recommended that this matter be dismissed. Thus, dismissal is warranted. The Court notes that Plaintiff's Title VII claims should have been originally brought within ninety days of receiving a right-to-sue-letter from the EEOC. *See Jones v. City School District of New Rochelle*, 2010 WL 996522, *3 (S.D.N.Y. Mar. 19, 2010) (Chin, J.). Plaintiff already missed this deadline in filing his original suit (*see* Doc. No. 4), and thus, the Court finds that defendant will not be further prejudiced by a dismissal without prejudice.

Accordingly, this case is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m) for failure to timely serve the complaint.

SO ORDERED.

DATED: April 15, 2010
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE